

**REMARKS**

After the foregoing amendment, claims 1-20 are pending in the application.

Applicant respectfully requests additional consideration and review of the claims in view of the foregoing amendment and the following remarks.

**Claim Rejections Under 35 USC §§112**

The Examiner has rejected claims 4 and 10 under 35 USC §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Applicant has responded to this rejection by amending claims 4 and 10 to replace the word "PHY" with as "physical layer", as mentioned on page 3, line 6 of Applicants' specification.

In view of the foregoing, Applicant respectfully requests that the rejection under 35 USC §112 be withdrawn.

**Rejections Under 35 USC § 103(a)**

The Examiner has rejected claims 1, 2, 5-8, 11, and 12 under 35 USC §103(a) as being unpatentable over Upp et al. (U.S. Patent No. 5,040,170) in view of Fatehi et al. (US patent 6,535,313). Applicant respectfully submits that even if it were obvious to combine UPP and Fatehi in the manner suggested in the Office Action, the resulting combination would not embody Applicants' inventive teachings nor anticipate Applicants' claims.

The purpose of Applicants' invention is to communicate the existence of faults that occur in a data communications network when a separate signaling link or channel that could be used to signal to various network elements the existence of a fault does not exist. An important aspect of Applicants' invention as defined in independent claim 1, for example, is that once a loss in, for example, a Gigabit Ethernet signal is detected by optical transceivers, a signal loss code insert is generated and transmitted as the mechanism for

communicating the existence of the loss in signal, as mentioned on page 16, lines 8-21 of Applicants' specification. Independent claim 1 points out this important aspect of Applicants' invention at, for example, lines 11-16 wherein it is indicated that the recited multiplexer interface comprises *"a first optical transceiver adapted to detect a first loss of signal ... and generate a signal loss code insert"* and wherein the multiplexer is *"adopted to multiplex said signal loss code insert with said data packets."* Independent claim 7 similarly recites *"multiplexing said signal loss code insert with said data packets."*

Upp provides a system for multiplexing and cross-connecting a plurality of low speed and high-speed electrical signals into the SONET format. In contrast to Applicant, Upp monitors for loss of signal on the receive side, rather than monitoring on the transmit side, and causes a bit to be set in the status register of the exception report handler block, as mentioned in column 11, lines 29-34 of Upp's specification. However, there is nothing in Upp or Fatehi that shows or suggests that once a loss in signal is detected on the transmit side, a signal loss insert code is generated and multiplexed with the outgoing data as the mechanism for communicating the existence of the loss in signal, as is done in Applicants' invention.

Whether or not it would have been obvious to combine Upp with Fatehi in the manner suggested in the Office Action, it is submitted that each of these claims is allowable at least for the reasons set forth hereinabove.

Accordingly, Applicant respectfully requests reconsideration and withdrawal of the § 103(a) rejection of claims 1, 2, 5-8, 11, and 12.

#### Claim Amendment

Claims 4, 7, and 10 have been amended to more clearly and particularly point out that which Applicant regards as the invention and to improve their form generally. Claims 8, 11, and 12 have been amended to correct a minor error in the claim references. It is submitted that the amendments made do not narrow the scope of the claimed subject matter in any way.

New Claims

New claims 13-20 have been added. These claims include limitations directed to the above-described distinguishing aspects of the invention and are submitted to be patentable for the reasons stated hereinabove.

Conclusion

In view of the foregoing amendments and remarks, Applicant submits that claims 1-12, as well as new claims 13-20 are in condition for allowance, and reconsideration is therefore respectfully requested. If there are any outstanding issues that the Examiner feels may be resolved by way of a telephone conference, the Examiner is invited to contact the undersigned to resolve the issues.

Respectfully submitted,  
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Atts.

I hereby certify that this correspondence is being deposited in the United States Postal Service as first class mail in an envelope with sufficient postage addressed to: Mail Stop <u>Non Fee Amendment</u> Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450 on <u>Aug. 6, 2003</u>	
<u>Tamika R. Gatson</u> Tamika R. Gatson	Date: <u>8/6/03</u>